

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

STEVE BORIA,

Defendant.

17-CR-142 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

Petitioner Steve Boria, proceeding *pro se*, moves under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. He claims in part that he was denied the effective assistance of counsel because his former counsel, Royce Russell, Esq., failed, despite his request, to file a timely notice of appeal. Boria is hereby deemed to have waived the attorney-client privilege as to his request that Russell file a timely notice of appeal. *See United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (“[T]he [attorney-client] privilege may implicitly be waived when defendant asserts a claim that in fairness requires examination of protected communications.”).

Consistent with *Campusano v. United States*, 442 F.3d 770 (2d Cir. 2006) and *Chang v. United States*, 250 F.3d 79 (2d Cir. 2001), the Court has determined that Boria’s claim of ineffective assistance of counsel for failure to file a timely notice of appeal would benefit from additional factual development. Accordingly:

No later than November 13, 2023, Boria shall submit a sworn affidavit addressing whether, when, and how he requested that Russell file a timely notice of appeal.

No later than December 13, 2023, Russell shall submit a sworn affidavit addressing Boria’s claim of ineffective assistance of counsel as to the filing of a timely notice of appeal. In doing so, he shall address why he filed an untimely notice of appeal given that, according to his representation to the U.S. Court of Appeals for the Second Circuit, Boria “requested [Russell] submit [Boria’s] intent

to file an [a]ppeal” at the time of sentencing. Letter of Royce Russell, *United States v. Boria*, No. 20-206, ECF No.15-4.

The Clerk of Court is respectfully directed to mail a copy of this order to Boria.

SO ORDERED.

Dated: October 11, 2023  
New York, New York

A handwritten signature in blue ink, appearing to be 'R. Abrams', is written over a horizontal line.

Hon. Ronnie Abrams  
United States District Judge